



**29 NOV 2006**

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In re Application of	:	
GABRIELSSON, et al.	:	
Application No.: 10/564,681	:	
PCT No.: PCT/EP04/51354	:	DECISION ON PETITION
Int. Filing Date: 05 July 2004	:	
Priority Date: 17 July 2003	:	UNDER 37 CFR 1.47(a)
Atty. Docket No.: 003D.0087.U1(US)	:	
For: LOCKING ELEMENT	:	

This decision is in response to the applicant's "PETITION UNDER 37 CFR § 1.47(a)" filed 22 September 2006 in the United States Patent and Trademark Office (USPTO).

### **BACKGROUND**

On 05 July 2004, applicant filed international application PCT/EP04/51354 which claimed priority to an earlier application filed 17 July 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States was set to expire at midnight on 17 January 2006.

On 13 January 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a First preliminary amendment and an Information Disclosure Statement.

On 24 April 2006, applicant was mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) informing applicant that an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. Applicant was afforded two months to file the required response and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 22 September 2006, applicant filed the present petition under 37 CFR 1.47(a) to accept the filed declaration without the signature of co-inventor Bart Verreydt accompanied by a petition for a three-month extension of time and payment of the extension of time fee. With the filing of the petition for an extension of time and payment of the appropriate extension fee, the present response is considered timely filed.

### **DISCUSSION**

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(i), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor. With the filing of the present petition and accompanying papers, applicant has satisfied items 1, 3 and 4.

As to item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (MPEP) states, in part: Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47... The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as Internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should include a statement of facts. It is important that the statement contain facts as opposed to conclusions.

While applicant has included a firsthand statement that the non-signing was mailed a complete set of application papers via Federal Express. Applicant has not included any tracking information including any receipt signature information to confirm that the inventor still lives as the address the packages were mailed to and actually received them. Thus, it is not possible to take the inventor's subsequent silence as a refusal to cooperate. It does not appear that any additional searching was performed to locate current contact information for the inventor.

For the reasons stated above, it is not possible to grant applicant's petition at this time.

### **CONCLUSION**

For the reasons stated above, applicant's petition under 37 CFR 1.47(a) is **DISMISSED without prejudice.**

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" Extensions of time may be

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obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read 'D. Putonen', with a stylized flourish at the end.

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